

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

**Title: BRIEFING ON STATUS OF ACTION PLAN FOR
FUEL CYCLE FACILITIES - PUBLIC MEETING**

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Date: Wednesday, March 22, 1995

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 BRIEFING ON STATUS OF ACTION PLAN FOR
5 FUEL CYCLE FACILITIES

6 ***

7 PUBLIC MEETING

8 ***

9
10 U.S. Nuclear Regulatory Commission
11 One White Flint North
12 Rockville, Maryland

13
14 Wednesday, March 22, 1995

15
16 The Commission met in open session, pursuant to
17 notice, at 10:00 a.m., Ivan Selin, Chairman, presiding.

18
19 COMMISSIONERS PRESENT:

20 IVAN SELIN, Chairman of the Commission

21 KENNETH C. ROGERS, Commissioner

22 E. GAIL de PLANQUE, Commissioner

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1 STAFF SEATED AT THE COMMISSION TABLE:

2 KAREN CYR, General Counsel

3 ANDREW BATES, Acting Secretary

4 JAMES TAYLOR, Executive Director for Operations

5 ROBERT BERNERO, Director, NMSS

6 ELIZABETH TEN EYCK, Deputy Director, Fuel Cycle
7 Safety and Safeguards Division, NMSS

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P R O C E E D I N G S

[10:00 a.m.]

CHAIRMAN SELIN: One of the major areas of concern to the Commission has always been the fuel facility. Since they are large facilities, they haven't in the past been subject to the discipline of reactors which make sense, but they are much more complex and of more intrinsic risk than most of the materials facilities. So, in the last several years, we've paid some attention to the status of the action plan for regulating these facilities and we were last briefed in April of '94.

The staff has been working not only to improve the licensing and inspection program, but they've considered revising Part 70 to incorporate a performance-oriented systems approach to licensing. So, the main topic this morning, as I understand it, is to discuss not only the overall action but the status of this potential rule. So, we look forward to the presentation.

Mr. Taylor?

MR. TAYLOR: Good morning. With me at the table are Bob Bernero and Liz Ten Eyck from NMSS.

For a long time, I've had a personal interest in the safety of these fuel facilities, particularly those which handle fissile material. We had a reminder of the importance of our attention to these facilities just in the

1 past few days when there was an upset in the material at one
2 of the facilities. Liz can speak more to that if the
3 Commission wants to hear about it. But the staff and the
4 resident are following up on this event and it appears to be
5 of limited safety significance. They were well below any
6 quantity, but they did exceed their own internal limits on
7 accumulation of material. But it does underscore the
8 importance of our continued attention to these facilities.

9 Liz Ten Eyck will continue with the formal
10 briefing.

11 MS. TEN EYCK: Thank you.

12 Good morning.

13 CHAIRMAN SELIN: Good morning.

14 MS. TEN EYCK: Today we would like to discuss the
15 progress that has been made in implementing the action plan
16 to correct weaknesses that have been identified in the fuel
17 cycle facility safety program.

18 If you recall, the action plan addressed five
19 major topics: strengthening the regulatory base; expediting
20 the renewal of nuclear facility licenses; increasing the
21 focus on inspection for chemical process and nuclear
22 criticality safety; providing additional training for NRC
23 staff; and encouraging the development of a licensee self-
24 assessment program by industry.

25 Next slide, please.

1 [Slide.]

2 MS. TEN EYCK: In the regulatory development area,
3 we have two major activities underway, rewriting Part 70 for
4 the domestic licensing of special nuclear material, and
5 concurrently developing associated guidance documents.

6 CHAIRMAN SELIN: These documents would be
7 necessary if and only if Part 70 is rewritten?

8 MS. TEN EYCK: Yes. That would be part of the
9 rulemaking package.

10 I will discuss these activities in further detail
11 on the future viewgraphs.

12 Next?

13 [Slide.]

14 MS. TEN EYCK: At the last Commission briefing on
15 this topic, we discussed the weaknesses in the present Part
16 70 and our recommendation that the best way to proceed was
17 through rewriting Part 70. At our rewrite effort, we are
18 focusing on taking a performance oriented risk based systems
19 approach through the conduct of an integrated safety
20 analysis which we call ISAs. The licensee would identify
21 any potential risks in their activities and then commit to
22 programs that will ensure that these systems are available
23 when needed to address a potential risk.

24 We are also trying to make the regulations more
25 user friendly so that new S&M licensees such as possibly

1 AVLIS or vitrification would not have difficulty in
2 understanding which requirements would be applicable.

3 Next slide, please.

4 [Slide.]

5 MS. TEN EYCK: To accomplish this goal, licensees
6 for SNM licenses have been divided into six groups which are
7 shown on the viewgraph as A through F. These range from
8 Group A, which are for small sealed sources with less than a
9 critical mass of SNM, to Group F for SNM fuel at power
10 reactors. We are planning ahead also by including a Group E
11 to facilitate future enrichment facilities. Requirements
12 for each groups are graded according to the risks that each
13 group pose.

14 Next slide, please.

15 COMMISSIONER ROGERS: Excuse me. This grouping is
16 new, right? There's nothing like this in Part 70 now?

17 MS. TEN EYCK: That's true, and it was because of
18 the diversity of SNM licensees that Part 70 cover. We were
19 trying to simplify it so that if you were just coming in
20 looking for a sealed source license, you'll know directly
21 what requirements apply rather than requiring a lawyer to
22 help you go through the requirements and decipher what
23 requirements are applicable.

24 CHAIRMAN SELIN: You would set a standard that
25 would embarrass all the other rules. But more seriously, do

1 we need to rewrite Part 70 to make this an effective
2 decision or do we have enough flexibility to say there are a
3 number of groups in the inspection and licensing guidance to
4 implement this informally if we chose to do so?

5 MS. TEN EYCK: I don't think we'd need to rewrite
6 Part 70 to assist in this particular area. Part 70 has
7 other major weaknesses far beyond making it user friendly.

8 Next slide, please.

9 [Slide.]

10 MS. TEN EYCK: The goal of the rewrite was to also
11 recommend to and address recommendations that were made in
12 NUREG-1324 which was entitled, "Proposed Method for
13 Regulating Major Fuel Facilities," which was developed by a
14 regulatory review task force that was formed after the
15 potential criticality incident at GE Wilmington.

16 The recommendations in NUREG-1324 contain programs
17 that you would expect to see in a good safety program and
18 indeed are usually present in varying forms at our present
19 licensees today. However, the existing Part 70 is old,
20 ineffective and doesn't adequately address these needed
21 programs. The proposed new Part 70 would close this gap,
22 contain the specificity that is needed for licensing and
23 inspection and enforcement and codify our requirements, and
24 in some cases the existing practices of many licensees at
25 our fuel facilities today that have been imposed by license

1 condition.

2 Next slide, please.

3 [Slide.]

4 MS. TEN EYCK: With a licensed approved program
5 based on an integrated safety analysis, it is proposed to
6 allow licensees to make 50.59 type changes to their existing
7 programs without NRC prior approval, provided that the
8 program does not -- the change does not reduce the
9 effectiveness of their program or change the safety basis.
10 Subsequently, by updating NRC after a change has been made
11 to their program, the licensee is maintained current and in
12 effect is a living license and as a result future amendments
13 will primarily be focused on major modifications.

14 This is a big change from the way we do it today.
15 A living license would also simplify the renewal process and
16 negate the future need for timely and costly renewal
17 activities. The renewal period could be greatly extended or
18 for future renewals a letter from the licensee simply
19 stating that the license and its basis are current and
20 requesting renewal of their existing license would suffice.

21 Next slide, please.

22 COMMISSIONER de PLANQUE: On the -- yes.

23 COMMISSIONER ROGERS: Yes. Sounds good. Sorry,
24 but I --

25 COMMISSIONER de PLANQUE: Go ahead.

1 COMMISSIONER ROGERS: Either one of us, I think,
2 probably have the same though. Precisely what makes a
3 license that is not a living license, and I won't say that's
4 a dead license because I guess that's not true, what makes a
5 current license a living license? Can you put that in some
6 simple terms that I can grasp?

7 MS. TEN EYCK: What's really different?

8 COMMISSIONER ROGERS: What's really different?

9 MS. TEN EYCK: Well, under our current process,
10 the licensee goes through a renewal process where the
11 license would be updated to current NRC practice or would
12 incorporate anything that was not present in the existent
13 license. But at NRC, we don't have anything that
14 necessarily represents in totality what the current
15 licensing program is. Under a living license, what we're
16 proposing to do is that they will submit us a new
17 application with the implementation of the Revised Part 70.
18 Then we will allow them to make changes in their program
19 without prior approval. They will then have to submit to us
20 the revised change which has already been reviewed by their
21 own safety committees compared to their integrated safety
22 analysis to show that there was no impact on the safety
23 basis. They will then submit to us a page change in their
24 license application. NRC will review those as they come in,
25 but after the fact just to make sure that we don't have any

1 major concerns. In effect, NRC would "maintain" a current
2 version of their license reflective of all of the programs
3 and activities that are in place and are committed to.

4 MR. BERNERO: I'd like to present it a slightly
5 different way. I think it would be easier to understand.
6 You may recall when we had the previous fuel cycle incidents
7 that at one time or another we got to the point what is the
8 license, what constitutes the license, and you end up with a
9 very large stack of paper that incorporates many letters by
10 reference and a host of license conditions. The licensing
11 basis in the current scheme of things is very obscure. It
12 is incorporated in that great stack of paper and all those
13 references and it is kept current, but it's inscrutable.

14 This living license approach gets the licensing
15 basis with an integrated analysis on the table, clearly
16 referable so that the licensee -- as Liz put it when she
17 said a letter saying, "Our basis is current. We request
18 renewal," that letter would simply be able to say, "As
19 documented here, here and here in a very scrutable way, our
20 licensing basis is current." And that's the difference.

21 COMMISSIONER de PLANQUE: So, are we simply
22 cleaning up the paperwork?

23 MR. BERNERO: Well, you see, Part 70, the way it
24 was written, and this is true in other material regulations,
25 there is a tendency not to implement the regulation in any

1 detail but to do things with tie-down license conditions
2 where fire protection or other significant safety aspects
3 are carried out through the license itself with conditions
4 and therefore they are not so clearly traceable to the
5 regulation and they're not as scrutable. That's one of the
6 fundamental problems with Part 70, is it's not user friendly
7 and the requirements that are imposed on licenses through
8 Part 70 include many things that are much more specific
9 license condition practice than they are explicit, clear
10 requirements in the regulation. That's the reason for the
11 inscrutability.

12 CHAIRMAN SELIN: Say that again. The regulation
13 requires something which is not required by the regulation
14 is what I heard you say.

15 MR. BERNERO: No. The regulation requires
16 adequately protection, the very general words, but in order
17 to get a license under that, there are conditions of that
18 license that are different from what one normally thinks of
19 as technical specification.

20 CHAIRMAN SELIN: They're not required by Part 70?

21 MR. BERNERO: They're not so clearly traceable to
22 Part 70. A fire protection --

23 CHAIRMAN SELIN: It's a practice that's grown up
24 over the years.

25 MR. BERNERO: Yes, they're practices that have

1 grown up over the years.

2 CHAIRMAN SELIN: Let me ask you this question, Mr.
3 Bernero. Who suffers by there not being a clear deductive
4 statement of what the license is? It's obviously
5 inconvenient for our inspectors. Is it an inconvenience for
6 the licensee as well?

7 MR. BERNERO: I think it is. I think it is an
8 inconvenience for the licensees. In all of our activity
9 under NUREG-1324 Action Plan, we have gotten, at least my
10 perception is, that the industry in a guarded way is
11 cooperative as seeing an opportunity to clarify the thing
12 and have a much simpler way to do it.

13 CHAIRMAN SELIN: If the licensee -- well, second,
14 is there written down someplace what we would like to see in
15 a model license? Have you gotten to this point of saying,
16 "We now have this stack of papers." It sounds very much
17 like the CLB arguments on the reactors. "We now have this
18 stack of papers which constitutes the current licensing
19 basis, but it's hard to figure out what it is."

20 Do we have a model license someplace that says,
21 "Ideally we would like a regulation which called forth a
22 license that looked this this," it had well defined parts
23 and that when something new came in you would replace a
24 paragraph with a new paragraph instead of just putting a new
25 page.

1 MS. TEN EYCK: I'm not aware of any document. We
2 have articulated in our rewrite. We have guidance on
3 submittals of applications and what should be in the
4 content.

5 CHAIRMAN SELIN: How can you do a new Part 70 if
6 you don't have a model of what license you would like this
7 Part 70 to evoke, provoke, evoke, call forward, however you
8 want to say it?

9 MS. TEN EYCK: Well, we have been articulating the
10 weaknesses in the current Part 70 in documents that we've
11 been doing during the development of it and what we would
12 try to improve.

13 CHAIRMAN SELIN: Okay. Let me act like an
14 economist. Posit such a model. Okay? Let there be such a
15 model. Assume that we know what we would like a model Part
16 70 license to look at. Okay? If we had such a model,
17 something that were consistent with the guidance that you've
18 been putting out, under today's Part 70 would a licensee
19 have the authority to come in and propose that his whole
20 current license be jumped and replaced by a new license that
21 had this model form?

22 MS. TEN EYCK: In the license renewal process.

23 CHAIRMAN SELIN: They could do that?

24 MR. BERNERO: Yes.

25 MS. TEN EYCK: Yes.

1 CHAIRMAN SELIN: So, we don't need to do a new
2 Part 70 if we wanted to make this new clean licensing
3 voluntary as opposed to mandatory?

4 MS. TEN EYCK: That's true.

5 MR. BERNERO: Yes, I think.

6 CHAIRMAN SELIN: Okay.

7 MS. TEN EYCK: The only thing that -- the problem
8 that we have with our current Part 70 is that it does not
9 clearly articulate --

10 CHAIRMAN SELIN: Doesn't require this.

11 MS. TEN EYCK: Doesn't require some programs that
12 have been identified as weaknesses in our current --

13 CHAIRMAN SELIN: Well, that is a different problem
14 that we've allowed to grow up really programs that probably
15 have no regulatory basis, that just through the inspection
16 guides which said, "You need one of these things to get an A
17 also," even though we can't go back and say, "Where is that
18 called for in the rules?"

19 But if we use the tech spec analogy, which as you
20 all know I'm very fond of, we could define the model license
21 as opposed to the model tech spec and then make its adoption
22 voluntary as opposed to rewriting the rule itself in order
23 to make it mandatory or not.

24 MR. BERNERO: I'm a little hesitant to say, "Yes,
25 you could do it on a tech spec model," because the tech

1 specs for a reactor are much more specific operating
2 constraints for systems already required, reviewed and held
3 at --

4 CHAIRMAN SELIN: Okay. Let me unabashedly back
5 off the tech spec model and just go back and say, "Could we
6 define a model license?" and encourage people who think it's
7 in their -- you know, licensees, in their interest to submit
8 a license renewal in this form. Forget the 50.59. That's
9 really a separate issue. It has nothing to do with the
10 standard model. That has to do with what process you go
11 through to update the message. Could we, if we chose, do
12 this?

13 MR. BERNERO: Let me answer it this way.
14 Recognizing the possibility of not going forward with Part
15 70, it would be to say to take the guidance of the model
16 license, the guidance for a submittal against a model
17 license and the rest of this guidance document and say,
18 "This is basically a regulatory guide or a system of
19 regulatory guidance on how to implement the current Part 70
20 in an acceptable way." I suspect we could do that. I
21 believe we could do that legally if the licensee applied
22 against that guidance for a license under the existing Part
23 70. I think we could do that.

24 CHAIRMAN SELIN: Let's go to the next question.
25 How many licensees -- there aren't a lot of facilities in

1 this universe, are there?

2 MS. TEN EYCK: We have over 400 Part 70 licensees
3 in the various groups.

4 CHAIRMAN SELIN: How many fuel facilities?

5 MR. BERNERO: Mostly small.

6 MS. TEN EYCK: Approximately ten.

7 MR. BERNERO: The big ones are just about 10, 9 or
8 10.

9 MS. TEN EYCK: Nine to ten.

10 CHAIRMAN SELIN: Among that nine to ten, is there
11 is a licensee who you think would be amenable to this
12 approach, would be interested in simplifying the licensing
13 basis, reduce their legal bills considerably and have --

14 MS. TEN EYCK: We might find a licensee, but on
15 the other hand we have licensees right now that through the
16 renewal process aren't voluntarily implementing some of the
17 improvements that we have identified. They have agreed to
18 wait until the proposed new rule comes out requiring it.
19 So, I think that you will find licensees on both sides of
20 the fence.

21 MR. BERNERO: They've been working on the playing
22 field that they would have requirements under a new Part 70
23 and therefore are not enthusiastic about stepping out --

24 CHAIRMAN SELIN: As long as there's the prospect
25 of a new Part 70.

1 MR. BERNERO: Yes.

2 CHAIRMAN SELIN: But if there were not the
3 prospect -- you know, this briefing is not all that
4 different from the briefing we had 11 months ago. So, as a
5 pragmatist, we're not making much progress on the new rule.
6 Maybe there's a substantive reason for that. So, I'm trying
7 to explore what would happen if we substituted a voluntary
8 cooperative course of action for a new rulemaking and that's
9 basically -- you know, it's obvious to you that that's what
10 I'm driving at and that's really the brunt of my questions.

11 MR. BERNERO: I'd like to have some consultation
12 with OGC to explore the thing and then we have a committee
13 interface that we use publicly from time to time with the
14 fuel cycle licensees and I'd like to solicit some opinions
15 from them because I know they have been reacting on the
16 expectation of having a new Part 70 that they must satisfy.
17 I know of no circumstance where they've considered or been
18 asked whether this alternative would work and it might.

19 CHAIRMAN SELIN: Ms. Ten Eyck?

20 I'm sorry, Commissioner de Planque.

21 COMMISSIONER de PLANQUE: Is it my understanding
22 that there are elements in Part 70 that you'd want to change
23 anyway and things that you'd want to include anyway?

24 MS. TEN EYCK: Yes. Well, there are right now in
25 Part 70 absences of requirements of areas that have been

1 identified as lacking like chemical process safety
2 requirements, a requirements for a good fire protection
3 program. There's a reference to it in the emergency plan,
4 but there's no specific requirement. I think, to follow up
5 on Mr. Bernero's comments, the question that would be would
6 be what effect or enforcement from an inspection and
7 enforcement point of view would operating under the existing
8 Part 70, what constraints that would present.

9 MS. CYR: Well, every license condition that's
10 been issued has to have been tied back to Part 70. I mean
11 you had to have a general basis under whatever your -- some
12 provision of Part 70 to impose any license condition that's
13 out there so that there is a basis in Part 70 for any
14 license condition that's out there now.

15 CHAIRMAN SELIN: Do we have Appendix B type
16 appendices to Part 70, general appendices for quality
17 assurance, safety operation, anything like that?

18 MR. BERNERO: No.

19 MS. TEN EYCK: I would say that the areas where
20 we're probably lacking is if you look on the list on
21 viewgraph 6 that identifies the different programs that you
22 would expect to see in a good safety program. There's not a
23 regulatory basis for the majority of those at the current
24 time.

25 CHAIRMAN SELIN: Oh, but that just flat out

1 disagrees with what the General Counsel says.

2 MS. CYR: You may not have a provision in Part 70
3 that says, "You must have a fire protection program that
4 looks like this," but you have somewhere in Part 70 a
5 requirement that talks about adequate protections for use of
6 materials in such and such a manner, which is what you must
7 have followed or gone back to when you've imposed a
8 particular -- if you have a fire protection -- I mean I
9 don't know the details, but if you have a current license
10 condition that addresses one of these, it's tied back in
11 some way to at least a general provision in Part 70.

12 MR. BERNERO: Yes. Let me point out, in large
13 measure what happens, and that's why you have this great
14 pile of paper with letters and commitments and so forth.
15 The tie-down, the license condition which ties you down can
16 tie you down to the letter of the regulation or to the
17 commitment by the licensee in application that I will
18 provide adequate protection by having exactly this or
19 exactly that kind of fire protection program.

20 CHAIRMAN SELIN: Sure. Clearly --

21 MR. BERNERO: And that's what we end up tying
22 down.

23 CHAIRMAN SELIN: It clearly leaves the inspectors
24 an enormous amount of discretion to say that in order for us
25 to find that you provide adequate protection, you must

1 provide fire protection, a management program, good office
2 for the inspector and a bunch of other things, which are not
3 explicitly called for in Part 70. I assume that's the
4 objection that we have at this point.

5 MR. BERNERO: Yes. And that's why -- right now
6 there is a non-systematic way of licensees individually
7 committing themselves to specific programs to provide that
8 adequate protection and then, of course, one inspects
9 against the specific program.

10 CHAIRMAN SELIN: Okay.

11 MS. TEN EYCK: We'd like to share with you today
12 some of the issues that we've been addressing in the rewrite
13 of Part 70. The preliminary draft regulatory impact
14 analysis of Part 70 indicates that for certain groups of
15 licensees the averted risk may not outweigh the cost.

16 However, similar to the recent changes that were
17 made to Part 20, the rewrite to Part 70 is a better, more
18 integrated approach to safety and a more effective way to
19 regulate. Also, the yardstick of \$1,000.00 per man rem is
20 difficult to apply at fuel cycle facilities since they pose
21 a mixed radiological safety and chemical risks and may, as a
22 result, understate the benefits. The present version of the
23 regulatory impact analysis also does not give credit for
24 certain elements of the safety program which the licensees
25 are currently implementing. These considerations will be

1 addressed in the final version of the draft document,
2 however.

3 Next slide.

4 CHAIRMAN SELIN: Before you go off, let me just
5 ask you the -- I don't know how much it's going to cost us
6 to write this, but it's the whatever that number is dollar
7 question. Do we believe that the current facilities do not
8 adequately protect health and safety? In other words, do we
9 believe that there would be significant improvements in the
10 health and safety at these facilities as a result of the new
11 Part 70?

12 MS. TEN EYCK: We don't feel that they're not
13 adequately protected from a safety point of view, but we
14 feel that these enhancements will significantly improve the
15 program and provide a better standardized program across the
16 industry.

17 CHAIRMAN SELIN: I understand all that, but I'm
18 really trying to get down to straight health and safety. Do
19 we see problems at these facilities today that would be
20 remediated by having the new Part 70 in hand or is it more a
21 question of efficiency, elegance, simplicity of --

22 MR. BERNERO: Mr. Chairman, I would like to put it
23 on two grounds. We do see the efficiency, elegance a
24 clearer way to do it, but our confidence that they are
25 adequately protecting the public health and safety now has

1 substantial uncertainties given the record of upsets that we
2 have had in these facilities. The record of upsets from our
3 experience traces to a haphazard or confused way of
4 licensing and of making sure that there is adequate
5 protection. So, I would see it primarily as reducing the
6 uncertainty in meeting health and safety requirements and
7 then also a streamlined, more economical, clearer way to
8 administer a license.

9 COMMISSIONER ROGERS: I'd like to ask the question
10 a little different way. Given that we do believe them to be
11 -- that public health and safety is adequately protected
12 right now or we'd shut them down, does a rewrite of Part 70
13 provide a significant greater assurance that in the future
14 that that condition will be maintained? In other words, if
15 we take a snapshot right now, everybody says yes, everything
16 is safe because they're running and we're watching them.
17 But does this rewrite provide something new with respect to
18 future assurances?

19 MS. TEN EYCK: I would say definitely yes, and
20 that's our attention. I think the main basis for that is
21 that through the conduct of an integrated safety analysis, I
22 think that the licensees will go far and understanding
23 better all of the integrated impacts from the various
24 chemical and nuclear criticality activities. I think that
25 it's going to put them at a better stead to make

1 modifications to their facilities, which they are all are
2 doing now, and I think that it basically is going to address
3 the question that they're losing a lot of the people through
4 retirements now that really were there and grew up with the
5 facility and understand the facility. I think through this
6 integrated safety analysis we will have and they will have a
7 better understand of the safety basis that they're
8 operating.

9 COMMISSIONER de PLANQUE: Other than the clarity
10 issue, which I think is what you're talking about here, what
11 about the resources, cost and FTEs on our part, cost and
12 manpower on their part to continue the regulatory process
13 under this new system?

14 MS. TEN EYCK: Well, I think that what we have
15 found is through workshops and meetings with the licensees
16 and their understanding of the benefits from an integrated
17 safety analysis, they in fact have already started on their
18 own in a lot of cases doing elements of an integrated safety
19 analysis. Some have even committed to these in their
20 licensing renewal activities.

21 So, I think that this is not a new technique.
22 It's currently being used in the chemical safety area, but
23 it hasn't been specifically applied to our fuel facilities.
24 I think that as the licensees are understanding more about
25 what is involved in the processes, they're seeing that there

1 are benefits and they are proceeding themselves in this
2 direction.

3 COMMISSIONER de PLANQUE: But do the benefits
4 extend to it costs them less, it's easier on their
5 resources, and what about ours?

6 MS. TEN EYCK: Well, I think that the cost
7 benefits will come through for the regulatory impact
8 analysis. It is going to be an up front cost to do the
9 regulatory analysis, but I think that when they look at it
10 from the future of making changes to their plants, comparing
11 changes to their integrated safety analysis, maybe the cost
12 of down time through operational problems, all of these can
13 contribute to reducing their operating cost. It's a new
14 area. It's really hard to project at this time, but we
15 certainly feel that way.

16 MR. BERNERO: But, Commissioner de Planque, you
17 touch on a point that is a difficult one here. The
18 regulatory analysis that goes with any regulation is
19 basically asking the question, "Why are you doing this?
20 What is the benefit, what is the averted risk?" and so
21 forth. When we say these facilities are operating safely
22 enough now, otherwise we would have shut them down, what
23 risk are we averting to put into the pan of the scale to
24 weigh against the costs that we're incurring with this new
25 regulation? That's a difficult point. We've been trying to

1 do a regulatory analysis on this and we can clearly see the
2 regulatory costs, the burden of writing a new regulation and
3 changing the system to implement it and it's very difficult
4 to quantify the benefit of reduced uncertainty, more
5 effective regulation.

6 COMMISSIONER de PLANQUE: Is there a benefit in
7 terms of cost and efficiency of carrying out the regulatory
8 function on their part and our part once a new system is in
9 place? Forget the cost of initial implementation.

10 MR. BERNERO: I haven't seen one discerned yet. I
11 feel it's there, but I haven't seen it quantified.

12 COMMISSIONER de PLANQUE: Will it be easier for us
13 to inspect and enforce? Will it be easier for us to
14 accommodate changes?

15 MR. BERNERO: Oh, yes, yes. I believe that's
16 true. But I haven't seen a quantification that attempts to
17 put numbers on that, to weigh that cost. That's one of the
18 things we have already had some dialogue about the
19 regulatory impact analysis or cost benefit of doing the
20 regulation. This is a very difficult point and it has to be
21 confronted.

22 CHAIRMAN SELIN: What is the one time cost of
23 getting from where we are today to a revised rule and with
24 the reg guides that go with it? I'm talking about the NRC
25 cost, not the licensee cost at this point.

1 MR. BERNERO: Do you know?

2 MS. TEN EYCK: We really haven't quantified it, I
3 don't think, in those terms.

4 MR. BERNERO: We have an estimate of that. I
5 don't know --

6 CHAIRMAN SELIN: How can you do these analyses if
7 you don't?

8 MR. BERNERO: Yes. I believe that the regulatory
9 impact analysis has that number, I just don't know it.

10 MS. TEN EYCK: In fact, it does and it's broken it
11 down for each of the groups of licenses that will be
12 implemented. But at this point it's very preliminary and
13 it's really something that we can't base any particular
14 certainty on. But regarding additional cost, I think that
15 the fact that once this approach is taken based on
16 integrated safety analysis and we can allow licensees to
17 make changes to their licensees without prior approval,
18 that's saving a lot of time and money from both the licensee
19 and NRC.

20 CHAIRMAN SELIN: Yes, but you could do that in a
21 much simpler fashion. We could basically set up a procedure
22 which would require an amendment to the rule, but we could
23 set up a procedure that says, "Here is a way to satisfy the
24 rule." You do a model. If you do a model, we then allow
25 the model to -- you have to commit to updating the model and

1 we allow the model to be updated through a 50.59 procedure,
2 which would be very straightforward in terms of staff time.
3 I mean it's an amendment to a messy base and so we have a
4 messy base with an elegant amendment on it.

5 There's no question that if we're doing Part 70
6 over again we wouldn't do what we have today, but that's not
7 the same as saying we should do a new Part 70. I'm being
8 sort of cynical. I see that this is at least two years in
9 the works. I hear your language about the analysis
10 underestimates these things, so it's clear we haven't come
11 up with a cost benefit analysis that shows the justification
12 for doing a new rule. And doing a new rule, the burden is
13 on the people who want to do the new rule. Maybe it's
14 because it's really not there. So, the question comes can
15 we follow a different approach which -- I mean if the
16 benefits are to the licensees, maybe a few of the licensees
17 would perceive the benefits and look at an amendment which
18 is an enabling amendment, not a mandatory amendment that
19 allows a different approach to doing license renewal and
20 then maintaining a living license once it's up.

21 I don't believe that the 50.59 type change and the
22 rewriting of Part 70 are necessarily linked together. I
23 know these sites have been pretty messy, but they're a lot
24 better now than they were two or three years ago. We've
25 clearly gotten a much better safety regime into the large

1 facilities just through the actions that have been taken
2 over time. Maybe the difficulty of doing a regulatory
3 analysis which calls for this new rule is because the
4 arguments aren't there, not because it's hard to do the
5 analysis. I'll wait to see the paper that supports this,
6 but certainly my view is going to be why can't we explore
7 the much more streamlined voluntary approach that allows
8 licensees who think that the benefits of doing the
9 integrated safety analysis and the model license and then
10 updating it through a 50.59 approach can take this on
11 without going through what are really very high hurdles not
12 only to rewrite the rule, which will cost us something, a
13 figure I'd like to know, but then to justify that rule when
14 none of us really thinks that the safety situation in these
15 large facilities is really that questionable.

16 Ms. Ten Eyck makes some points about there's a lot
17 of non-institutionalized learning that's in the heads of 50
18 and 60 year old people who are going to be retiring in the
19 not too distant future. But if we can't get that into the
20 analysis, then maybe it's just not that big a deal. But I'm
21 very unconvinced that this overall Part 70 rewrite really is
22 justifiable. I don't know whether it's the use of our
23 resources or the imposition on the facilities.

24 MR. BERNERO: Yes. In large measure, this
25 experience with the Part 70 reminds me of what we went

1 through on the new Part 20 where there was no averted risk
2 to it. It was just a change in the codification.

3 CHAIRMAN SELIN: But Part 20 applies to the whole
4 world, I'm very happy to say. A small increase in that
5 gives us a small reduction in risk. That's one thing. Part
6 70 is a very small universe. We'll have to bear all the
7 costs of it and the overall reduction in risk is going to be
8 very small just because we're talking about -- I mean for
9 all intensive purposes we're talking about a dozen large
10 facilities, that there are ways to handle all the others.

11 MR. BERNERO: Yes. The others are much more
12 amenable.

13 CHAIRMAN SELIN: So the old Part 20, the standard
14 for Part 20 and for Part 70 are completely different.

15 MS. TEN EYCK: It's different.

16 COMMISSIONER de PLANQUE: You indicated that a lot
17 of the licensees don't want to make changes because they're
18 envisioning a new rule and they want to sit tight and I
19 understand that. What is the general feedback from the
20 different classes of licensees that you have grouped
21 together here? Do they want a new Part 70?

22 MS. TEN EYCK: Well, the primary focuses on these
23 changes were for fuel cycle facilities. The other licensees
24 just kind of got carried along as being a Part 70 license.
25 I think it's a mixed reaction. Some of them are very happy

1 just to go on doing what they are now. I think if we were
2 responding to this from Commission direction to really
3 strengthen the regulatory base, there's certainly other
4 options to explore. We were just basically seeing that this
5 was an area that needed a lot of attention, had received
6 attention in the past, and we were trying to upgrade the
7 weaknesses that exist.

8 COMMISSIONER ROGERS: And I think that's right. I
9 think that's a correct characterization of the history here,
10 that we went through a period some years ago where we had
11 some events taking place in fuel cycle facilities which
12 seemed to be totally absurd. When we looked at Part 70, it
13 really didn't say very much with respect to any kind of
14 requirements that one could be sure would not allow that
15 same sort of thing to take place in the future. I think it
16 was very clear that Part 70 was inadequate with respect to
17 the fuel cycle facilities and I think the staff has got that
18 from the Commission and started to work on a rewrite of Part
19 70.

20 I think the question that's being raised now is
21 whether our concern with the fuel cycle facilities is
22 sufficient to rewrite Part 70 or whether there's another
23 approach that might be equally effective and perhaps more
24 economical that would deal with the fuel cycle facilities
25 themselves without necessarily going and rewriting all of

1 Part 70.

2 MR. TAYLOR: Well, at this stage we weren't
3 prepared to address that.

4 CHAIRMAN SELIN: Yes.

5 MR. TAYLOR: So, I think what we need to do is
6 either conclude the meeting or go through where we are.

7 CHAIRMAN SELIN: Well, let's go through the
8 other --

9 MR. TAYLOR: And we have to come back to you
10 because this sort of puts a different --

11 I think she did mention we were asked to license
12 AVLIS, which is a whole new different process. Some of us
13 would think that the types of things we're talking about
14 here for that process, some of which is classified and all
15 that, would be very important for the groundwork for
16 licensing an AVLIS facility. That's a very different --

17 COMMISSIONER ROGERS: Yes, absolutely.

18 MR. TAYLOR: -- and complex operation.

19 CHAIRMAN SELIN: Let's put it this way. On second
20 thought -- I mean it's true that this is all responsive to
21 things that I, among other people, have asked close to three
22 years ago. But now that we've gotten so far into the
23 regulatory analysis and really haven't been able to find any
24 gold in the analysis, I think we do have to step back and
25 say, "Where are we going?" If we need a rule to handle

1 AVLIS, maybe we just ought to do a rule to handle AVLIS when
2 it looks like we're --

3 MR. BERNERO: I'd like to very much test the
4 response of the industry to this concept of a guidance based
5 renewal rather than a new Part 70. That could be reflected
6 on AVLIS because AVLIS would be a new application,
7 presumably under Part 70. You know that some legislation is
8 needed before we -- we have a holding place conceptually
9 here, but right now AVLIS would be licensed under Part 50 in
10 a two step license and that's one of the issues about this
11 possible legislation.

12 CHAIRMAN SELIN: Having pulled the rug out on you
13 completely, why don't you continue with the license renewal
14 and the --

15 MS. TEN EYCK: Okay. We could just jump through
16 all of the Part 70 discussion, if you want, and just hit
17 another topic on the action plan.

18 CHAIRMAN SELIN: Please.

19 COMMISSIONER ROGERS: Well --

20 COMMISSIONER de PLANQUE: No, I want to hear that.

21 COMMISSIONER ROGERS: I want to hear about ISAs.

22 CHAIRMAN SELIN: Okay.

23 COMMISSIONER de PLANQUE: And I want to hear about
24 backfit.

25 COMMISSIONER ROGERS: To me, that's an important

1 element in my thinking on this issue.

2 MS. TEN EYCK: Okay.

3 COMMISSIONER de PLANQUE: You're still on page 8.

4 COMMISSIONER ROGERS: You can go to page 9.

5 MS. TEN EYCK: On page 8, let's talk a little bit
6 about backfit. Backfit is a topic that has certainly
7 received considerable attention. As you may recall, Mr.
8 Chairman, you received a letter from the Nuclear Energy
9 Institute encouraging the Commission to adopt a backfit
10 provision in Part 70. All the Agency is being held to
11 higher standards for backfitting new regulations. There are
12 several technical concerns that question backfitting for
13 Part 70.

14 First, unlike power reactor licensees, SNM
15 licensees are not a relatively homogeneous group. Second,
16 risk base-lines characterizing each licensee's risk and the
17 aggregate relative risk of licensees does not exist. Third,
18 the safety basis for licensing and inspection has been
19 deterministic with large uncertainties, highlighted by
20 operating events that are precursors to event sequences with
21 unwanted consequences. We think at this time that plant-
22 specific backfit controls are not practicable until both
23 generic and plant-specific risk baselines and operating
24 uncertainties are understood sufficiently to make
25 substantial safety improvements with their -- or to

1 sufficiently measure substantial safety improvements and
2 their associated cost.

3 The present goal of \$1,000.00 per man rem is
4 difficult to apply at fuel cycle facilities which pose mixed
5 radiological and chemical risks, with chemical risks often
6 dominating. NRC likely will be also faced in the near
7 future with licensing new technologies like AVLIS without an
8 established experience base. We are continuing to look at
9 this topic. However, we feel that the proposed performance-
10 based Part 70 and accompanying guidance which will be
11 subject to a regulatory analysis requirements combined with
12 proactive management oversight will adequately manage plant-
13 specific backfit without the addition of a backfit
14 provision.

15 COMMISSIONER de PLANQUE: The problem I have with
16 some of the arguments you make against doing a backfit is
17 that those same arguments could be used to say you can't do
18 a Part 70 for these facilities either. How do you set the
19 basic requirements given that?

20 MS. TEN EYCK: Well, we're hoping that through the
21 proposed Part 70 integrated safety analysis that will help
22 establish the risk basis. That is what we feel is really
23 not existent now and that we would be able to develop
24 through the integrated safety analysis process.

25 CHAIRMAN SELIN: Do you have any idea what it

1 costs to do an integrated safety analysis for a fuel
2 facility?

3 MS. TEN EYCK: It varies. I have some limited
4 preliminary data. I can pull out the ISAs. Well,
5 unfortunately, at this point I can't find the specific item
6 that addresses integrated safety analysis. It's spread out
7 through all of the different elements. Unless I can turn to
8 somebody in Research that is more familiar with the
9 integrated safety analysis.

10 Okay. I do have input that the individual that
11 did the analysis for NFS Erwin said that it was in the \$300
12 to \$400 K range. That can vary from site to site over the
13 complexity and also the techniques that are used in doing
14 the analysis. As I say, we're meeting tomorrow, this is
15 very timely on this thing with the contractor that has been
16 working on the regulatory analysis. Unfortunately there
17 have been so many areas where we found and questioned the
18 data and the premise that it was made on at this time. It's
19 a little preliminary to actually give firm costs.

20 Okay. Next viewgraph, please.

21 [Slide.]

22 MS. TEN EYCK: To codify in the regulations the
23 position of the Commission in the area of chemical process
24 safety after the Sequoyah Fuels event, we are following the
25 guidelines that were established in the memorandum of

1 understanding with OSHA. It is therefore being proposed in
2 Part 70 that NRC be responsible for chemical hazards that
3 could adversely affect radiological safety or could be
4 released from the processing of licensed radioactive
5 material. By this definition we're hoping to bound the NRC
6 responsibility and making that distinct from OSHA which is
7 more the occupational risks.

8 Next slide, please.

9 [Slide.]

10 MS. TEN EYCK: Another concern during our rewrite
11 was to delete any unnecessary requirements for both
12 licensees and NRC. Since the focus of our rewrite on Part
13 70 was to correct weaknesses in the Fuel Cycle Facility
14 Program, we elected at the present time to leave the present
15 requirements for Group A and B licenses unchanged. That
16 would negate the need for agreement states to possibly have
17 to make corresponding changes in their requirements for
18 comparability.

19 Now, the down side of this position is that the
20 requirements for Group As and Bs would remain in the present
21 prescriptive format. We plan to solicit the comments of
22 industry during the comment period to see if they would
23 prefer a performance oriented approach and the associated
24 burden with that approach.

25 MR. BERNERO: Excuse me, Liz.

1 You see how this idea of leaving that alone for
2 the smaller licensees fits very well with the concept of do
3 you really have to rewrite Part 70 to get the job done or
4 can you do it with guidance on the places where it pinches?

5 CHAIRMAN SELIN: Your proposal actually is to have
6 a new Part 70 prime --

7 MR. BERNERO: Yes.

8 CHAIRMAN SELIN: -- that says, "We'll have 70 and
9 then for a small class of licensees we'll have" -- you know,
10 whether it's a dozen or a couple dozen.

11 MS. TEN EYCK: Right. And we were able to do that
12 by grouping the licenses as such and specifically saying,
13 "This is what has to apply for each particular group of
14 license."

15 The only new requirement that would impact a Group
16 A or B licensee is the requirement to register with the NRC
17 annually and provide information regarding what SNM they
18 possess and where it is located. We've found that we have
19 requirements that deal with notifying NRC when SNM is
20 transferred among people, but there are many, many licensees
21 out there, particularly the hundreds of the smaller ones,
22 that could move from location to location without us knowing
23 where they are or they could dispose of the material without
24 us being aware of that situation. The registry is focused
25 on trying to address that situation.

1 COMMISSIONER ROGERS: Excuse me, Liz. Can you
2 tell me how many licensees there are in Group C?

3 MS. TEN EYCK: There are 16 licensees in Group C.

4 COMMISSIONER ROGERS: There are 16 in that?

5 MS. TEN EYCK: Right.

6 COMMISSIONER ROGERS: In Group C.

7 MS. TEN EYCK: And they are typically universities
8 with research reactors such as Penn State University or MIT.
9 However, Barnwell and Hanford disposal sites are also
10 licensed under Part 70 and would fall in this category.

11 COMMISSIONER de PLANQUE: And you've got 400 or so
12 in A and B? Is that what I heard earlier?

13 MS. TEN EYCK: I think all total we have about
14 400. We have approximately 220 in A, approximately 69 in B
15 and then the Cs and Ds you're familiar with.

16 COMMISSIONER de PLANQUE: Yes.

17 MS. TEN EYCK: Okay. Moving on to slide number 9.

18 [Slide.]

19 MS. TEN EYCK: The associated draft guidance
20 documents to support the rulemaking package have been
21 completed in draft form and these include a standard review
22 plan which is a new approach of providing a standardized
23 approach for licensing step to use in reviewing a license
24 application. We have this document and also we have a
25 standard form and content guide which will provide guidance

1 to licensees regarding the type and depth of information to
2 be supplied in their submittals. We also have a guidance
3 document on alternative methods for performing integrated
4 safety analyses that is ready to go with the draft
5 rulemaking package. We have been working closely with
6 industry on the development of these documents and have
7 encouraged their participation.

8 Next viewgraph, please.

9 [Slide.]

10 MS. TEN EYCK: The rulemaking has been pursued on
11 a high priority aggressive schedule. To expedite this, an
12 interoffice management steering committee and a rule writing
13 committee has been formed. NMSS has forwarded the draft
14 Part 70 and associated guidance documents to these
15 committees. Research has been focusing on the regulatory
16 impact analysis and all of the other documents that are
17 necessary for a rulemaking package. We are scheduled to
18 discuss this rulemaking package with the CRGR on April 11th
19 and we are working on a tight schedule, but we plan at this
20 time to have a rulemaking package to the Commission by June
21 30th.

22 MR. BERNERO: But, of course --

23 MS. TEN EYCK: Yes.

24 CHAIRMAN SELIN: Just stop there. Given your
25 inability to answer some of these questions on what will

1 they cost and stuff, I just can't imagine that you can be
2 this scheduled unless -- I'm sure you know what is known and
3 we don't know what it will cost to do the review, we don't
4 know how it will impact on the different licensees. I just
5 don't see how you could possibly have the information
6 available to make --

7 MS. TEN EYCK: I'm sure it's exactly true that we
8 don't know what it will cost. We're refining that data now.
9 There has been effort going on for a number of months on
10 developing this document. We have the document, we're just
11 in a refinement stage at this point. We plan to have it
12 available for --

13 CHAIRMAN SELIN: I wasn't thinking of the draft
14 rule so much as the regulatory impact.

15 MS. TEN EYCK: That's what I'm talking about, the
16 regulatory impact.

17 MR. BERNERO: The regulatory impact, as I
18 indicated, it's negative, negative in the sense it's not
19 justified.

20 CHAIRMAN SELIN: I see.

21 MR. BERNERO: And we've been struggling with that.
22 That's why there's this meeting tomorrow and follow-up.

23 CHAIRMAN SELIN: So, either you can come up with a
24 package on this schedule which we'll turn down or you can
25 keep working on a package that --

1 MS. TEN EYCK: Well, and that's not --

2 MR. BERNERO: Yes.

3 MS. TEN EYCK: That's not the case for all groups
4 though. Some of them come out positive. There's just a few
5 that are on the borderline and as I say we're refining that
6 data because we think that in some cases the data may not
7 have considered all of the elements that are appropriate.

8 MR. BERNERO: Well, Mr. Chairman, what stands very
9 significantly here is from the dialogue in this meeting, the
10 first order of business is a wholly different approach.
11 Rather than this persistence in trying to do a revised Part
12 70 --

13 CHAIRMAN SELIN: Let me tell you what I'd like
14 personally to see you do and I'll discuss it with my
15 colleagues. It may or may not survive in an SRM, but at
16 least I'd like you to think about it.

17 Number one is I don't have any objection that you
18 go forward to the CRGR. I think that's very useful where
19 you get something short of a Commission review but people
20 haven't been working on the piece and it's only a few weeks
21 from now to get it. So, I have a lot of confidence in the
22 group, even though my colleagues kept me from wiping them
23 out a number of months ago. In fact, it's really a very
24 good scrub to have.

25 Second is when you go forward to them, I would

1 like you to think about an alternative approach which -- and
2 I'm reassured by the fact that you have these guidance
3 documents that would say, "Look, let's put a hold on the
4 rulemaking since the arguments are not clearly positive." I
5 mean everyone would agree on that. And say, "Can we find a
6 pilot facility that would be willing to follow as much of
7 those documents that stayed relevant to a voluntary
8 approach, including doing an ISA?" and if the General
9 Counsel would let us, to sort of indicate that we would
10 consider amending the rules so that people followed this
11 voluntary procedure and did have, in Liz' words, a living
12 document, the voluntary procedure being more of a deductive
13 license that could then be updated instead of just having
14 things added on top of it, that we would also permit a 50.50
15 approach as the --

16 I'm not sure we could do this, but if we could do
17 this as part of the enticement to enter into this voluntary
18 program, to consider the possibility to just hold up on the
19 rulemaking and see what happens as you go through a pilot.
20 We try to make decisions which maybe in a global scope of
21 things aren't so big, but for these two dozen licensees this
22 is a very big deal. Maybe we could get a real pilot program
23 through if there was somebody willing to play ball on that,
24 to see what we learn, whether it was worthwhile, whether
25 people would grab this or not.

1 Anyhow, that's something that -- I'm just thinking
2 out loud. The Commissioners would have to discuss this.
3 We'd have to discuss this with the staff to see if it's a
4 crazy idea.

5 But I do want to make clear, I have no objection
6 to your going forward to the CRGR. I think that will be a
7 very interesting piece, given that that's going to happen
8 fairly soon. But I would like you to be thinking about,
9 well, if it doesn't work that way, is there another approach
10 to --

11 MR. TAYLOR: Let us take a look at that and come
12 back as well. We'll go to the CRGR because they need to
13 look at the whole technical essence of this.

14 MS. CYR: I'm told in one of the licenses the
15 renewed, NFS Erwin, that there was a 50.59 like provision
16 put into that license.

17 CHAIRMAN SELIN: So we could do it on a license
18 amendment basis.

19 MR. BERNERO: Case by -- you know, license
20 condition, yes. I think a very crucial point here besides
21 briefing the CRGR is to elicit some comment from especially
22 the Class D licensees, the ones this is primarily aimed at.
23 They're represented here in the audience and I'm confident
24 we can get a fairly early feedback from them and I think
25 we'll do that, too.

1 COMMISSIONER ROGERS: I think it's important. I'm
2 listening to the Chairman's ideas and I find them very
3 interesting, not too different from some thoughts that I've
4 been talking with my staff about, but a little different.
5 But I do think that a volunteer for a pilot program to me
6 would be interesting, but unless there's some assurance that
7 the other members of that Group D would have an interest in
8 this kind of an approach, then a pilot program really is
9 only just that one licensee. The problem in this area is
10 that the facilities are very different. There are
11 proprietary interests that make things more complex in some
12 ways and the question in my mind would be whether a purely
13 voluntary system is practical if essentially -- if not
14 everybody wants to follow it. Then you've got a mixed bag
15 and that would make it more complicated for us rather than
16 less complicated. If we had half of this group under
17 present system and half under a revised -- a renewed license
18 in a revised format that's based upon all the work that
19 you've done so far, to include the elements that we think
20 are important.

21 So, I think some feedback from the licensees on
22 this is very important. The only thing I've heard so far,
23 up until quite recently, has been that a number of people
24 were waiting for us to come out with a new Part 70. Whether
25 they were happy or unhappy with the developments along those

1 lines, I had absolutely no knowledge of. But I think now is
2 the time to try to find out probably somewhat spurred on by
3 the discussion at this meeting how the licensees feel about
4 some kind of a voluntary effort that would include, I take
5 it, in the renewed license documents some specificity with
6 respect to these elements which we felt ought to be included
7 in a new Part 70. That's what I understand is being
8 discussed.

9 COMMISSIONER de PLANQUE: We've been throwing a
10 lot of rocks in the machinery, so I wouldn't like to miss
11 the opportunity to throw a compliment your way. I really
12 commend you and compliment you on developing all the
13 guidance documents at the same time as you're working on the
14 rule because too often I think we see a rule, none of the
15 guidance documents behind it, and only when those guidance
16 documents are developed do we see the problems with the
17 initial rule. So, I applaud that approach entirely and I
18 think that may be how you found some of the problems as you
19 went along. So much for the compliment.

20 I guess I would also encourage you to go back to a
21 very simple question, what's the problem? What is it you're
22 really trying to fix? I think it's very interesting that
23 looking at the different groupings of the licensees, it may
24 be that for three or four of the groupings you really don't
25 need to do anything and the idea of a 70 prime or some other

1 subset where you make the changes that are really beneficial
2 for those licensees makes some sense. Clearly you've said
3 that there are things that do need to be changed for some of
4 the licensees and that suggests a rule change anyway. But
5 perhaps go back and say, what in addition are the problems,
6 what particular licensees do they apply to and can you sort
7 out that subset and direct it at them?

8 I just want to rethink the issue from a big
9 picture point of view.

10 CHAIRMAN SELIN: I'd like to ask you one more
11 question before you go on to the license renewal.

12 References have been made to the NFS Erwin ISA and
13 license changes. Are they halfway towards being a pilot for
14 this or --

15 MR. BERNERO: Not really because of their business
16 base. They were renewed, but on a shorter term basis and
17 actually the business situation prevails there. Were they
18 continuing with a major program, they had a fine status as a
19 complex facility with lots of fissile material and all of
20 that. They would have been a good choice.

21 MS. TEN EYCK: From discussions that we've had
22 with the licensees, I would anticipate that the biggest
23 stumbling block to having a volunteer is the competitive
24 nature of the industry. They're very sensitive to having
25 requirements that would apply to one that would not apply to

1 a competitor. So, I would just put that only from the
2 experience that we've gained through working them in the
3 recent past, that this is certainly a significant
4 consideration on their part.

5 Okay. If we could go on to Viewgraph 11 and talk
6 about some other --

7 COMMISSIONER de PLANQUE: If I can interrupt for a
8 minute. You make a very good point. I think we also have
9 to consider even if the risk remains the same, if the cost
10 can go down significantly for the licensee or for us in
11 terms of carrying out the regulatory process, that's a plus
12 that should appeal to them. But that has to be there.
13 There has to be something in it for them and for us.

14 [Slide.]

15 MS. TEN EYCK: Okay. Moving onto some other
16 elements of the action plan, the licensing renewal
17 activities are continuing on schedule. If you recall, the
18 seven major fuel facilities were in renewal when the
19 licensing plan was initiated and we shortened the completion
20 schedule from the year 2003 to 1997. One renewal was
21 completed in 1994. We have four scheduled for completion in
22 1995 with the remaining two to be completed in 1997. As I
23 mentioned earlier through workshops and communicating with
24 the licensees regarding the ISA process, we do have some
25 licensees that have voluntarily implemented elements of the

1 ISA in their renewal process.

2 Next viewgraph, please.

3 CHAIRMAN SELIN: That does open a possibility and
4 it's not more than a possibility, that given that some of
5 them already implement some of these pieces and given that
6 we would hold out, I hope, a carrot of a simpler, cheaper
7 renewal process and the 50.59 and maybe something else if
8 this turned out to be a successful pilot, that some might
9 see the competitive advantage rather than a disadvantage in
10 being a pilot, but maybe not. It's something you'd have to
11 look into.

12 COMMISSIONER ROGERS: In these license renewals,
13 how are you dealing with the fact that you've got a somewhat
14 different Part 70 out there in the wings? While you're
15 proceeding with a license renewal, are you strictly
16 following Part 70 or does the license renewal discussions --
17 or do the license renewal discussions that are taking place
18 somehow or other connect into some of the thoughts in the
19 revised Part 70?

20 MS. TEN EYCK: It has been impacting us a little
21 bit. We are renewing to Part 70. We have encouraged
22 licensees to voluntarily commit to certain elements of the
23 proposed Part 70 and in some cases they have seen fit to do
24 that. In other cases they're hesitant to commit to doing
25 things that their other competitors are not required to do.

1 So, there is some differences there and I think that this is
2 something that we've tried to deal with.

3 There are other areas where there have been
4 elements of, say, fire protection program or a chemical
5 safety program that we have not been able to require in the
6 renewal process that we feel is appropriate because we have
7 been counseled by OGC that we don't have a legal base to
8 include those programs. So, it's kind of been a mixed bag.
9 It's been with the cooperation of the licensees. We have
10 one licensee that's elected that they don't want to change
11 anything in the renewal process and have elected to wait
12 until the rule is published. So, in that case, they would
13 submit an application that would do just the minimum that
14 they would have to until the proposed rule came out or the
15 proposed rule became final.

16 COMMISSIONER de PLANQUE: What is the term for
17 these renewals?

18 MS. TEN EYCK: Licensing renewals.

19 COMMISSIONER de PLANQUE: Yes, how long?

20 MS. TEN EYCK: Oh, the term.

21 COMMISSIONER de PLANQUE: Term, I'm sorry.

22 MS. TEN EYCK: They had been licensed -- the
23 renewal period had been every five years. It was proposed
24 to be extended to ten years just to be able to have a period
25 long enough for renewals to catch up and whatever. With the

1 proposed rule, we were even considering an extended renewal
2 for even maybe the life of the plant once we had a living
3 license, but this was just something that was under
4 consideration. But at this point, we were planning to try
5 to go for ten year renewals.

6 COMMISSIONER de PLANQUE: Okay.

7 MS. TEN EYCK: Okay. Moving to viewgraph number
8 12.

9 [Slide.]

10 MS. TEN EYCK: Our upgrades to the inspection
11 program have also been proceeding on schedule. Draft
12 chemical process safety inspection procedures were completed
13 in April of 1994. From July until November of 1994 we
14 conducted a pilot inspection program with our new chemical
15 safety inspection procedures with contractor and regional
16 support and we have recently finalized these inspection
17 procedures and are continuing with the inspection program.

18 In the area of nuclear criticality safety, we are
19 currently focusing on upgrading existing chemical -- I'm
20 sorry, existing criticality safety inspection procedures
21 that are in place.

22 COMMISSIONER de PLANQUE: The last time we were
23 briefed on this there was some question about the expertise
24 on our own staff in both these areas. How is that going?

25 MS. TEN EYCK: Well, we're still working on it.

1 It's a revolving door. We hire some new criticality people
2 and we have lost some of our experienced ones. We're not
3 totally manned at this point but it's a continuing effort.

4 MR. BERNERO: Yes. This is an area where we have
5 to keep up a sustained effort both on the training front and
6 the recruitment front. In the past year and a half we've
7 lost two senior, very seasoned experts in this field. But
8 we continue to hire and we do find competent people from
9 time to time.

10 COMMISSIONER de PLANQUE: Are you referring to the
11 chemical area as well as the criticality?

12 MR. BERNERO: Yes, but my remarks were on the
13 criticality.

14 MR. TAYLOR: The criticality.

15 COMMISSIONER de PLANQUE: And how are we --

16 MR. BERNERO: The chemical, I think we're doing
17 reasonably well. The procedures are working and the
18 criticality is tough. It's, as you know, something of a
19 black art. My successor is very interested in it because
20 he's one himself.

21 MS. TEN EYCK: We do have a new SLS position for a
22 senior criticality specialist on the boards and we're hoping
23 that we will have a lot of talented people respond to that
24 vacancy.

25 CHAIRMAN SELIN: Yes. As the fellow who ran the

1 shooting the man out of the cannon act in the circus said,
2 "I do have to replace the human cannonball. It's easy to
3 get applicants, but are they of the right caliber is the
4 question." It's not that easy to get the people with the
5 right experience.

6 MS. TEN EYCK: Okay. Moving to viewgraph number
7 13.

8 [Slide.]

9 MS. TEN EYCK: It's hard to follow that.

10 Weaknesses also exist in NRC staff training for
11 fuel cycle facilities and nine new courses were identified
12 as needed to enhance the staff's understanding of fuel cycle
13 facility related technologies. Through a contractor and the
14 NRC technical training center support, we have developed
15 four new courses, three of which have been taught. We have
16 two that are in the process of being finalized and we have
17 three additional courses that are planned in the future.

18 Next viewgraph, please.

19 [Slide.]

20 MS. TEN EYCK: As you may recall from previous
21 meetings and particularly in the action plan in the early
22 phases after the GE Wilmington event, the Commission
23 suggested that instead of NRC team assessments that we might
24 consider as an alternative a standardized licensee self-
25 assessment program. Industry has taken the lead to develop

1 this program and the Nuclear Energy Institute is leading
2 this effort and has provided NRC with an outline of a
3 proposed industry self-assessment program.

4 Based on early discussions with this group, we had
5 expected a self-assessment program based on a common
6 methodology with performance indicators or some technology
7 similar to what would be used by INPO. However, the
8 industry now proposes that each licensee develop their own
9 self-assessment program. They felt that due to the wide
10 differences in the operations of each licensee within the
11 industry, that it was inappropriate to directly compare
12 individual licensee's performance to some generic
13 performance indicator.

14 CHAIRMAN SELIN: But that's the indicators. The
15 original idea was that the industry do an industry-wide
16 self-assessment, not that each plant just -- I mean they're
17 supposed to do a self-assessment. You know, GE Wilmington
18 is supposed to assess themselves just as current business.

19 MS. TEN EYCK: Exactly.

20 CHAIRMAN SELIN: But no one has picked up the ball
21 saying, "Let's have a --"

22 MS. TEN EYCK: Well, our concern is that the
23 industry does not feel that that program -- I mean that it
24 would be appropriate. Their alternative to it was that they
25 have a workshop annually of the individual, the licensee's

1 self-assessment programs where they discuss the strengths
2 and the weaknesses of their programs. They publish and
3 distribute a document that highlights the strengths, but
4 they destroy the weaknesses. We felt that that didn't
5 really meet our intent for a standardized program, although
6 it may be very useful to the industry and the individual
7 licensee's self-assessment program.

8 CHAIRMAN SELIN: Well, let me just stress the
9 standardized is less important than having an industry-wide
10 group that does the kind of reviews INPO does of its
11 members.

12 MR. BERNERO: Yes.

13 CHAIRMAN SELIN: Just because it's hard to do a
14 standardized program doesn't mean it's not also useful to
15 have other people from industry looking over each other's
16 shoulders. But I gather that's not going to happen.

17 MS. TEN EYCK: Well, apparently from the various
18 differences in their operations and also here again this
19 competitive concern with proprietary information, they felt
20 that this wasn't possible and it may not be a viable option
21 to replace the team assessments, although there were not
22 necessarily supporting team assessments at this point. But
23 they have come forward and they have suggested a
24 performance-based safety and safeguards assurance program
25 which we think has some merit and it was based on an

1 integrated safety analysis on all of the elements that we
2 feel is important to ensure that equipment that is needed
3 for safety will be there to function. However, there was
4 some question regarding how they saw the role of NRC play in
5 this and so we want to meet with them to discuss this
6 further.

7 But from an industry-wide self-assessment, as you
8 would have envisioned, similar to what INPO might be doing,
9 it doesn't look like this is an industry that is amenable to
10 that type of an approach.

11 CHAIRMAN SELIN: Such a great acronym, INFO, the
12 Institute of Nuclear Fuel Operations. Just think, you could
13 get somebody to pick that up. That's really too bad. That
14 would be so much healthier than --

15 Are the current assessments like the Cooper
16 assessment? Are they joint NRC licensee or are they just
17 purely an NRC assessment when there's a problem and we go in
18 there?

19 MS. TEN EYCK: I'm not sure what you're calling
20 the Cooper assessment.

21 CHAIRMAN SELIN: You know what I'm talking about.
22 When we went to the Cooper plant we did a joint assessment
23 with the -- or the licensee did an open assessment and then
24 we --

25 COMMISSIONER ROGERS: Well, they did it

1 themselves.

2 CHAIRMAN SELIN: But they went outside and they
3 sort of looked at what we would do if we were doing a
4 diagnostic and they just tried to --

5 MR. BERNERO: Yes. They tried to emulate our
6 standard approach.

7 COMMISSIONER ROGERS: Right.

8 CHAIRMAN SELIN: There's nothing like -- that's
9 not what we --

10 MR. BERNERO: No, we don't have anything like
11 that.

12 CHAIRMAN SELIN: Okay. Thank you.

13 [Slide.]

14 MS. TEN EYCK: Okay. Next viewgraph is basically
15 the summary that we are working on the action plan to
16 correct these weaknesses and that we do have -- we are
17 making progress on our initiatives and we will proceed with
18 your suggestions that are forthcoming with regard to the
19 regulatory activities.

20 MR. TAYLOR: Mr. Chairman, Bob and I wanted to
21 modify that last bullet and say rule developments currently
22 not -- but seriously, in concluding the ideas that have been
23 expressed by the Commission plus the requests for
24 information coming out of the analysis lead me to say that
25 based upon whatever comes out as a staff requirements

1 memorandum, we're prepared then to come back to the
2 Commission to respond to the additional information, plus
3 look at some of the ideas which have come up in this
4 meeting. I think we would come back with a supplemental
5 type paper to the Commission in advance of any rule per se.

6 CHAIRMAN SELIN: I'm sympathetic to staff doing
7 what the Commission tells them to do and then the Commission
8 changing ground, but I don't think that's really what's
9 happened here. What's happened is that the results of the
10 analyses just don't bear up the hypothesis that this was a
11 terrific idea to do it. It may still be marginally a good
12 idea or marginally a bad idea, but it's clear that the
13 expected benefits of doing a new Part 70 just haven't turned
14 out. So, the comments should be read as being given where
15 we are today, which is not where I expected two years ago we
16 would be today, what else should we do?

17 MR. TAYLOR: Now is the time to think about it.

18 CHAIRMAN SELIN: Now's the time to take a good
19 hard look at that. I join with Commissioner de Planque in
20 commending you not just in principle of doing these three
21 documents, but the fact is that they will affect your
22 thinking and our thinking and would at least facilitate
23 looking at some alternative approach to getting what I would
24 hope to be 80 percent of the benefits at 30 or 40 percent of
25 the cost, if that's the route that the CRGR review pushes us

1 into.

2 But once again, good presentation, good work.

3 Please do go forward with the CRGR piece. But even before
4 you go to them, you might think of alternatives so they're
5 not faced with a take it or leave it, do we do this or do we
6 continue the present unsatisfactory situation.

7 MR. TAYLOR: We can start discussions.

8 MR. BERNERO: Yes. We will, in the presentation
9 to CRGR, explore this alternative to the extent we can so
10 that they're really looking at a much different thing than
11 what we originally envision, which was let's get on board
12 the rulemaking train.

13 CHAIRMAN SELIN: Commissioner?

14 COMMISSIONER ROGERS: Well, just that I agree with
15 the remarks of the Chairman and Commissioner de Planque on
16 the quality of your work in getting to this point. I think
17 that it is very valuable, but I do think that it's always
18 appropriate to stop and take stock before one rushes ahead.
19 I think this is a good time to do that and I think the
20 questions that have been raised are very appropriate
21 questions, but I do think they should be taken in the
22 context of the work that you've already done, that you've
23 really done a great deal of work here. You've really
24 illuminated the problems and I think what we're trying to
25 search for is the best way to proceed. It may be that it's

1 a little different from the standard approach that we've
2 taken in rulemaking in the past. I'm very much in favor of
3 that.

4 So, I want to compliment you on the work that
5 you've done and I think a very useful presentation today.
6 Thank you.

7 CHAIRMAN SELIN: Commissioner de Planque?

8 COMMISSIONER de PLANQUE: Yes. I would just add
9 that even if you can't find a justification that's tied to
10 an improvement in risk, either now or it's difficult to
11 explain as a possibility in the future, that doesn't mean
12 that if we can find a clearer, better, more efficient, more
13 cost effective way to do the regulation that we shouldn't
14 find a way to do that. That may not be a rulemaking. But
15 certainly that's in everybody's benefit to do that.

16 Thank you.

17 CHAIRMAN SELIN: I would also like to stress that
18 I find this categorization of licensees and these disparate
19 licensees into if not homogeneous at least similar groups
20 would be very useful. I hope it's not just a presentational
21 device, that you put this into your operations and your
22 inspection program, et cetera.

23 Thank you very much.

24 [Whereupon, at 11:22 a.m., the above-entitled
25 meeting was concluded.]

CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING ON STATUS OF ACTION PLAN FOR
FUEL CYCLE FACILITIES - PUBLIC MEETING

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Wednesday, March 22, 1995

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company

Transcriber: Carol Lynch

Reporter: Peter Lynch

STATUS OF ACTION PLAN FOR REGULATING FUEL CYCLE FACILITIES



**DIVISION OF FUEL CYCLE SAFETY AND SAFEGUARDS
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS**

BACKGROUND

- **Program Weaknesses Identified**
- **Action Plan Developed To Address:**
 - **Regulatory Development**
 - **License Renewal**
 - **Inspection**
 - **NRC Staff Training**
 - **Licensee Self-Assessment**

REGULATORY DEVELOPMENT

- **Rewrite Part 70**
- **Develop Associated Guidance Documents**

GOALS OF PART 70 REWRITE

- **Develop Performance-Oriented, Systems Approach**
- **Grade Requirements According To Risk**
- **Ensure Systems Needed To Address Risks Are Capable Of Performing Intended Functions**
- **Make More User-Friendly**

PART 70 LICENSE GROUPS

- **Group A - Sealed SNM sources in amounts less than critical mass**
- **Group B - Unsealed SNM in amounts less than critical mass**
- **Group C - SNM in critical mass quantities not requiring a Group D, E, or F license**
- **Group D - SNM at a fuel cycle facility**
- **Group E - SNM at an enrichment facility**
- **Group F - SNM fuel at power reactor site**

GOALS OF PART 70 REWRITE (CONT.)

- **Incorporate recommendations from NUREG-1324**
 - **Integrated Safety Analysis To Identify Risks**
 - **Fire Protection Program**
 - **Chemical Process Safety Program**
 - **Management Controls and Oversight**
 - **Configuration Management Program**
 - **Quality Assurance Program**
 - **Maintenance Program**
 - **Training Program**
 - **Unusual Occurrence Reporting**

GOALS OF PART 70 REWRITE (CONT.)

- **Allow "50.59 type" Changes**
- **Support "Living License"**

PART 70 REWRITE ISSUES

- **Cost Benefit**
- **Backfit**
- **Chemical Safety Regulatory Authority**
- **Impact on Agreement States**

ASSOCIATED GUIDANCE DOCUMENTS

- **Standard Review Plan (SRP)**
- **Standard Format and Content Guide (SF&CG)**
- **Guidance on Methods of Performing ISAs**

REGULATORY DEVELOPMENT SCHEDULE

- **BRIEF CRGR**
- **APRIL 11, 1995**
- **RULEMAKING PACKAGE TO COMMISSION**
- **JUNE 30, 1995**

LICENSE RENEWAL PROGRAM

- **License Renewal Continuing On Schedule**
 - Four Major License Renewals in 1995**
 - Two Major License Renewals in 1997**
- **Many Licensees Already Performing Elements of ISAs**

INSPECTION PROGRAM

- **Chemical Process Safety Inspection Procedures**
 - **Draft Procedures Completed**
 - **Pilot Test Program Completed**
 - **Chemical Safety Inspections Underway**

- **Nuclear Criticality Safety Inspection Procedures**
 - **Update Underway**

NRC STAFF TRAINING PROGRAM

- **Nine New Courses Identified for NRC Staff**
- **Development of Four Courses Completed**
- **Development of Two Courses Under Contract**
- **Three Courses Planned**

LICENSEE SELF-ASSESSMENT PROGRAM

- **Industry Encouraged To Develop Self-Assessment Program**
- **Proposal Received from NEI**
- **Standardized Industry-wide Self-Assessment Program Not Proposed**

SUMMARY

- **Progress Being Made in Implementing Action Plan**
- **Rule Development Currently On Schedule**